

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

GILBERTO SOLIS,)	
)	
Petitioner,)	
v.)	
)	No. 12-3329-CV-S-DGK-H
LINDA SANDERS, ¹ Warden,)	
United States Medical Center for Federal Prisoners,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert that this Court should address his claims because this action is properly filed pursuant to 28 U.S.C. § 2241.

Having fully reviewed the record *de novo*, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, he has failed to demonstrate that the 28 U.S.C. §2255 remedy is an

¹The name of the current warden has been substituted as the proper respondent.

ineffective or inadequate vehicle to test the legality of his sentence. Accordingly, the Court finds, after *de novo* review, that the conclusions of the Magistrate should be approved. Petitioner contends that his conviction and sentence are illegal because he was not notified that he could waive his administrative deportation hearing in order to receive a reduced sentence. It is clear that this claim is not properly before this Court. A challenge to his sentence and conviction must be made in the sentencing court pursuant to 28 U.S.C. § 2255, and petitioner has failed to establish that the motion is inadequate or ineffective to test the legality of his sentence.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that the Motion to Withdraw filed by counsel for the petitioner be, and it is hereby, granted. It is further

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Greg Kays
GREG KAYS
United States District Judge

Date: November 9, 2012